

DEBT RELIEF (DEVELOPING COUNTRIES) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3 – Amount recoverable in respect of claim for qualifying debt etc

15. *Section 3* reduces the amount recoverable on a debt to which the Act applies to the amount which the creditor could recover if the creditor provided the level of debt relief expected under the Initiative.
16. *Subsection (1)* reduces both qualifying debts and causes of action associated with those debts to the relevant proportion. A cause of action associated with a qualifying debt might, for example, be a damages claim.
17. *Subsections (3) and (4)* apply to instances where an agreement has been reached to reduce – “compromise” – a debt or related cause of action. For example, the creditor and debtor may have agreed to reduce a debt from £100 to £50, while the level of reduction expected under the HIPC Initiative is 90%. The effect of these sections is to apply that 90% reduction to the original £100, rather than the £50 value of the debt at the time the legislation is applied. In the example, the amount recoverable would be £10 rather than £5. The subsections ensure that a creditor that has agreed to such a compromise is not disadvantaged in comparison to a creditor that has not.
18. *Subsections (5) and (6)* have the same effect as *(3) and (4)* but cover agreements that reduced the debtor’s obligations through rescheduling the terms of repayment or which replaced the original debt with a new debt. *Subsection (5)* refers to the net present value of future payments. The discount rate applied in association with the Initiative is the relevant Commercial Interest Reference Rate, as published by the Organisation for Economic Co-operation and Development (“the OECD”).
19. *Subsection (8)* ensures that the reduction will apply when the qualifying debt is a secured debt, and the secured creditor attempts to enforce the security.
20. The effect of *subsection (9)* is that UK courts must apply the reduction even if they are applying foreign laws.